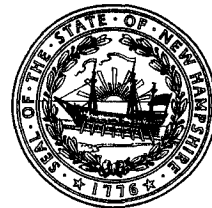




The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner



January 25, 2006

Paul T. Fitzgerald, Esq.
Fitzgerald, Sessler & Nichols PA
11 Academy Square
Laconia, NH 03246

Re: Docket No. AF 04-116 – City of Franklin

Dear Attorney Fitzgerald:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

City of Franklin
Attn: Scott R. Clarenbach
316 Central Street
Franklin, NH 03235

Re: Franklin Fire Station, 59 West Bow Street
Franklin UST ID # 0-110090

**ADMINISTRATIVE FINE
No. AF 04-116**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and the City of Franklin parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. The City of Franklin ("Franklin") is the registered facility owner of two underground storage tank ("UST") systems at the Franklin Fire Station facility ("the Facility"), further identified as UST # 0-110090, located on real property at 59 West Bow Street, Franklin, NH ("the Property").
3. On December 30, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-116 ("the Notice") to Franklin seeking fines totaling \$4,500 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Franklin for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for the 10,000-gallon gasoline (Tank 5) and 10,000-gallon diesel (Tank 6) USTs in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a), the Division sought a fine of \$1,000.
5. The Notice further cited Franklin for violating Env-Wm 1401.21(1) by failing to display and permanently affix a certificate bearing the Facility's tank information. Pursuant to Env-C 607.02(b), the Division sought a fine of \$100.
6. The Notice further cited Franklin for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment on Tanks 5 and 6. Pursuant to Env-C 607.05(j), the Division sought a fine of \$400.
7. The Notice further cited Franklin for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for Tank 6 and by failing to perform the annual test for proper operation. Pursuant to Env-C 607.05(d), the Division sought a fine of \$1,000.

8. The Notice further cited Franklin for violating Env-Wm 1401.33 for failing to install corrosion protection for piping under the dispensers of Tanks 5 and 6. Pursuant to Env-C 607.03(f), the Division sought a fine of \$2,000.

9. In order to settle this matter, the Division and Franklin have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

10. Of the proposed fine, in the amount of \$4,500, 20% or \$900 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$900 shall be suspended due to the Franklin's good faith effort to return this facility to compliance, which Franklin did as soon as feasible. An additional 20% or \$900 shall be suspended due to Franklin's history of compliance at this facility. An additional 15% or \$675 shall be suspended due to the Franklin's cooperative effort in providing information and correcting the violations as soon as possible. An additional 15% or \$675 shall be suspended due to Franklin's municipal fiscal constraints.

11. The suspended portion of the proposed fine, in the amount of \$4,050 is contingent upon Franklin's maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this document. If Franklin fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$4,050, shall become due and payable immediately. If Franklin maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

12. Franklin agrees to pay the remaining \$450 upon execution of this agreement by Franklin.

13. Payment under Paragraph #12 and any payment that becomes due pursuant to Paragraph #11 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

14. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

15. By executing this Agreement, Franklin waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

16. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Franklin, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written

agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

17. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

COPY

Date

11/10/05

By:

Duly Authorized

DES Waste Management Division

COPY

Date

1/17/06

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 24th day of JANUARY, 2006

COPY

Michael P. Nally, Commissioner
Department of Environmental Services